



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

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OFFICE OF  
WATER AND  
WATERSHEDS

Ms. Wendy Wiles, Director  
Environmental Solutions Division  
Oregon Department of Environmental Quality  
811 S.W. Sixth Avenue  
Portland, Oregon 97204-1390

Re: Determination of Progress for Oregon's Nonpoint Source Management Program

Dear Ms. Wiles:

Thank you for submitting the *Oregon Nonpoint Source Pollution Program 2015 Annual Report* (dated July 2016~~5~~) ("Annual Report") prepared by the Oregon Department of Environmental Quality (ODEQ). Based on our review, the Environmental Protection Agency (EPA) concludes that Oregon has made satisfactory progress in implementing its nonpoint source (NPS) management program during 2015. We have enclosed the EPA's *Checklist for Determining Progress of State NPS Management Programs and Performance of CWA Section 319 Grants* to provide you with additional insight into our determination of satisfactory progress.

Commented [CJ1]: This date must be wrong—July 2016?

**Background**

Section 319(h)(11) of the Clean Water Act (CWA) requires States to report annually on progress under their nonpoint source (NPS) management programs. EPA must establish whether the State has made "satisfactory progress" each year in implementing its NPS management program using the EPA's *Checklist for Determining Progress of State NPS Management Programs*. The annual report is a primary means by which the EPA both makes this determination and evaluates performance under the Section 319 grants.

**Highlights**

Notable accomplishments during 2015 are listed below.

- ODEQ and its partners continued to develop the Deschutes, Powder/Burnt, Coquille and Mid-Coast basin TMDLs. ODEQ continued work to revise the Hood River temperature TMDL and the Klamath and Lost Rivers nutrient TMDLs and they continued working on TMDL implementation and implementation plan development in the Willamette, Rogue, Umpqua, Klamath, Tillamook, North Coast and other basins with ~~issued~~ TMDLs.
- ~~The first Willamette 5 year review was completed and assessed in 2014. The results were used to document successes and strategies for focusing on TMDL priorities. Highlights from the first 5 year review can be viewed in the Five Year DMA Report. A 5 year review for the Mollala Pudding was completed in 2016.~~

Commented [CJ2]: What about the Mid Coast implementation ready TMDL efforts focusing on NPS sources and implementation, completed subgrant projects or DEQ's review of ODA plans?

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Commented [CJ3]: I would delete this highlight since one five year review was completed in 2014 and another in 2016 (this review is focused on 2015) unless some major activity pertaining to the 5 year reviews occurred during 2015.

- ODEQ worked (and continues to work) with the Oregon Department of Agriculture (ODA) to establish clear and measureable objectives to include the Agricultural Water Quality Management Plans. This is an important action which could strengthen the State's approach for addressing agricultural management measures established under CZARA.
- ODEQ's toxics monitoring program completed a five year screening project for toxic contaminants in Oregon's rivers, streams and lakes. Locations were targeted to identify contaminants in water but can also include contaminants in streambed sediment and fish tissue. ODEQ is finalizing a report which will summarize the findings and will be used to select locations and toxic pollutants for ongoing monitoring.
- ODEQ's staff worked with EPA's MS4 Program staff and TMDL staff to develop "TMDL associated language", that will be included in the State's MS4 permits. ODEQ staff also worked closely with key EPA staff in developing and public noticing ODEQ's first MS4 Phase II General Permit.
- The Willamette Basin Coordinators participated on the OWEB interagency grant review teams to assist with the prioritization of funding and as well as provide support for projects that relate to TMDL load allocations. DEQ Basin Coordinators also participate on technical teams specifically for temperature load allocations in the Willamette, e.g. the Habitat Technical Team, for the Willamette Biological Opinion through the BPA and Army Corps.
- Groundwater monitoring continued in groundwater management areas with nitrate concentrations of concern. Additional groundwater screening outside of GWMA's began in the spring of 2015 and will rotate to two new areas each year. Sampling will include nitrates, arsenic and pesticides of concern.
- ODEQ, ODF, NOAA and EPA staff worked closely over the year exploring options to address options for addressing the identified forestry gaps Oregon's Coastal Nonpoint Pollution Control Program.
- ODEQ collected macroinvertebrate samples at approximately 60 locations in the Tillamook and Umatilla watersheds to interpret watershed health. By using macroinvertebrate assemblages at reference sites to characterize environmental tolerances of various taxa, ODEQ can assess whether macroinvertebrates are impaired and infer the nature of potential stressors.

**Commented [CJ4]:** I would consider whether to include this highlight since it is focused on monitoring to determine listing and the monitoring efforts to highlight for the NPS program are ones directed at determining whether restoration has resulted in making WQ improvements or measuring the effectiveness of BMPs. I also suspect these efforts are funded in part through CWA 106 grants.

The guidance states:  
NPS program funding may be used for monitoring in specific waterbodies consistent with the state NPS management program to (1) identify nonpoint sources of pollution, (2) support the development of a WBP or acceptable alternative plan, or a NPS or mixed-source TMDL, or (3) evaluate the restoration of NPS-impaired waters following implementation of NPS pollution control project(s) funded by § 319 or other sources.  
Watershed project funding may be used for water quality results monitoring to assess the effectiveness of on-the-ground activities to improve water quality (e.g., pollutant loading trend analysis) **as part of the implementation of a completed WBP or acceptable alternative plan, regardless of the entity conducting this monitoring.**

**Commented [CJ5]:** I would delete this highlight because it really is focused on point source and this is the NPS program.

**Commented [CJ6]:** Consider whether to include for the same reasons as cited above.

**Commented [CJ7]:** Consider whether to include for the same reasons as cited above.

### Key Recommendations

In addition to EPA's evaluation of ODEQ's progress on its NPS programs during 2015, I have listed actions below on which ODEQ can focus during 2016 and beyond.

- Demonstrating water quality improvements resulting from completed restoration actions is challenging because ODEQ's Laboratory Analytical Storage and Retrieval (LASAR) database has not been functional since 2012. This impacts staff's ability to store, retrieve and analyze existing data and address the requirements of these measures. Recently ODEQ did produce a report titled "Business Case for DEQ Environmental Data Management System" which outlines the State's approach for addressing the database problem. Unfortunately, the report indicates it will take six years to establish a new data base system which will cost several million dollars. While EPA encourages ODEQ to move forward with a comprehensive approach to fixing the data management system, EPA also strongly encourages ODEQ to establish an interim data management

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system that allows state to store, retrieve and analyze all appropriate ~~319~~ data so Oregon can generate stories showing improved water quality due to restoration (as well as evaluating the impairment status of waters that could lead to Oregon submitting complete and timely lists of impaired waters and integrated reports).

- In FY 2015 key vacancies existed in ODEQ's 319 program including the NPS Coordinator position. This increased the workload of existing staff and impacted the timely development important documents such as the 319 Annual Report and Oregon's Intended Use Plan. ODEQ should take the necessary steps to fill these vacancies or re-evaluate how the 319 related workload will be addressed in an efficient and timely manner.
- States must use at least 50% of the annual appropriation of § 319 funds (watershed project funds) to implement watershed projects guided by watershed based plans. In FY 2015 and FY 2016, ODEQ's award was reduced by 30% because the State failed to provide an approvable Coastal Nonpoint Pollution Control Program. In both years the "penalty" was taken from the portion of the funding targeted for watershed projects pass through grants because the NPS program funds funding for the PPG supports key staff who implement the State's NPS pProgram. Consequently the funding for the watershed projects pass thru grants was far below 50% of the total award. ODEQ is submitting a waiver request for the CWA 319 requirement for 50% of the state's allocation to be used for watershed projects spending requirement and is suggesting that it will exploring applying for a "leverage exemption" from this requirement in FY 2017. Over the next year ODEQ is strongly encouraged to work closely with EPA to explore how ODEQ could meet the requirements of establish the leverage exemption.
- Oregon should consider revising the format of its annual NPS reports to be more concise. The current format includes far more information that is needed for EPA's purposes. EPA would be happy to meet with ODEQ to discuss refinements on this report.

The EPA will continue to work in partnership with Oregon to address nonpoint source water quality issues, including program activities and projects supported directly through EPA Section 319 funding. Please feel free to contact Alan Henning, ~~our~~ Oregon 319 Nonpoint Source Coordinator at (541) 687-7360 if you have any questions regarding our review.

Sincerely,

Daniel Opalski, Director  
Office of Water and Watersheds

Enclosure: Checklist for Determining Progress of State NPS Management Programs and Performance of CWA Section 319 Grants

cc: Mr. Eugene Foster, Watershed Management Section Manager, ODEQ (via email)  
~~Mr. Don Yon, Watershed Management Section, ODEQ (via email)~~

Mr. Ivan Camacho, 319 Grant Coordinator, ODEQ (via email)